IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1818 OF 1992

Dunlop India Ltd. & Ors. ..Petitioners.

V/s.

S.K.Laul & Ors. ..Respondents.

Mr.J.D.Mistry i/b. M/s.Crawfaord Bayley & Co. for petitioners.

Mr.R.Asokan for respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 3RD JULY, 2006.

P.C.:-

Heard learned counsel for the rival parties. Perused the petition.

FACTS

2. Petition is directed against the order 29/6/1992 passed by the appropriate Customs Authority under section 269 UD (1) of the Income Tax Act, 1961.

3. The petitioners have also challenged the Constitutional Validity of the said section. Mr.Mistry submits that in view of the Apex Court

Judgment in the case of **C.B. Gautam V/s. Union of India & Others** reported in **1993 (199) I.T.R.530**, the issue regarding Constitutional validity of section 269 UD does not survive since it has already been decided and the validity of the legislation is upheld by the Apex Court. He, however, submits that while confirming the Constitutional validity, the Apex Court read down provision of section 269 UD of the Income Tax Act. Hence the acquisition of the property under section 269 UD has to be in consonance with the principles of natural justice.

SUBMISSIONS

4. Mr.Mistry submits that the petitioners would be entitled for an opportunity of hearing as laid down by the Apex Court in C.B.Gautam's case (cited supra). In his submission, matter needs to be remanded back to the Competent Authority for consideration afresh.

5. Per contra, Mr.Ashokan, the learned counsel for the revenue submits that in the facts and circumstances of the present case, if the ratio of C. B.Gautam is applied, the matter need not be remanded back to the Competent Authority for re-hearing afresh. He placed reliance on last but one para of the said Judgment in support of his submissions. The said para

reads as under :-

> " We may clarify that, as far as completed transactions are concerned, namely, where, after the order for compulsory purchase under section 269UD of the Income Tax Act was made and possession has been taken over, compensation was paid to the owner of the property and accepted without protest, we see no reason to upset those transactions and hence, nothing we have said in the judgment will invalidate such purchases. The same will be the position where public auctions have been held of the properties concerned and they are purchased by third parties. In those cases also, nothing which we have stated in this judgment will invalidate the purchases. "

6. Mr.Mistry while reacting to the submission made by the learned counsel for the revenue submits that reliance on the aforesaid para by the revenue is misplaced in view of the interim order passed by this Court by consent of parties on 15th September, 1992, which inter alia; provides as under:-

MINUTES OF CONSENT ORDER

1. Respondents waive service of Rule.

2. Pending the hearing and final disposal of this petition, no further steps shall be taken by the parties pursuant to the order passed under section 269 UD(1) dated 29.6.1992 (Exhibit F to the petition) except as is provided in the following paragraphs.

3. Within two weeks from today Respondents No.1 to 4 will restore possession of Flat No.38 along with Garage No.38 at "Hill Park", Alexander Graham Bell Road, Bombay 400006 hereinafter referred to as "the property" to the 1st Petitioner along with the keys to the said Flat & Garage.

4. Within two weeks from today, the 1st Petitioner will provide to respondents No.1 to 3 full particulars of the person or persons entitled to occupy the property or claiming any interest therein.

5. The 1st Petitioner, his successors, servants and / or agents;

   a) will not sell, transfer or alienate or in any manner dispose of the property,

   b) will not create any interest in the property or deal with or encumber the property in any manner,

   c) will not induct any person into the property and will not part with the possession of the property,

pending the hearing and final disposal of the petition.

It is clarified that the 1st Petitioner's employees are entitled to use the property.

6. a) In the event of the Rule herein ultimately discharged, the 1st Petitioner will surrender the vacant and peaceful possession of the property to Respondents No.1 to 3 (or any other person duly authorised by them in this regard) and Respondent Nos.1 to 3 will tender the amount of the consideration payable in terms of Section 269 UF of the Act to the 1st Petitioner as if the order under Section 269 UD(1) was passed on the day the Rule is so discharged.

b) In the event of the Rule herein being ultimately discharged the 1st Petitioner and Respondent No.5 will not take any plea of limitation for non-payment of the amount of apparent consideration, nor will they contend that the property has revested in the 1st Petitioner under Section 269 UH of the Act, where such non-payment of the apparent consideration arises by reason of this order.

7. In the event that;

   a) any consideration or improvement is made

in respect of the property, the same will be done at the risk of the 1st Petitioner and will not in any way enhance the amount of the consideration payable.

b) any damage or material alteration is caused to the property, other than normal wear and tear, the amount of the consideration shall be reduced by such sum as the Respondents No.1 to 3, for reasons to be recorded in writing may by order determine after giving reasonable opportunity of being heard to the 1st Petitioner.

8. Respondents No.1 to 3 entitled to refund the amount of Rs.1,12,08, 705 to the Central Government.

9. Petition to be heard along with Writ Petition No.163 of 1991.

10. Notice of this Petition to be given to Attorney General of India.

CONSIDERATION

7. Having heard the rival parties, perusal of the aforesaid interim consent order, it would be clear that the acquisition under challenged did not reach the stage of finality. The clock was put back by consent order. The amount of consideration was never accepted by the petitioner. The possession was returned back to the petitioner with the liberty to the revenue to withdraw the amount of consideration from the P.D. account. The consent terms were not acted upon. Thus, there was no concluded transaction between the parties. In this view of the matter, the submissions advanced by Mr.Ashokan cannot be accepted.

The same are liable to be rejected outrightly.

8. Having said so, turning to the Apex Court Judgment (cited supra), the impugned order under section 269 UD(1) is set aside. The matter is remitted back to the Appropriate Authority for consideration afresh in the light of the directions contained in the aforesaid Judgment of the Supreme Court in the case of C.B.Gautam leaving all rival contentions open.

9. We also order that in the facts and circumstances of the case that the statement in form 37-I submitted by the petitioners shall be treated as if it was submitted today.

10. It is made clear that that failure on the part of the revenue to pass an appropriate order within the statutory period prescribed under the provisions of section 269UD(1), the said provisions shall operate and take effect in accordance with law.

11. In the result, petition stands disposed of and rule is made absolute in terms of this order with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)